

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 271.

THE UNITED STATES, PETITIONER,

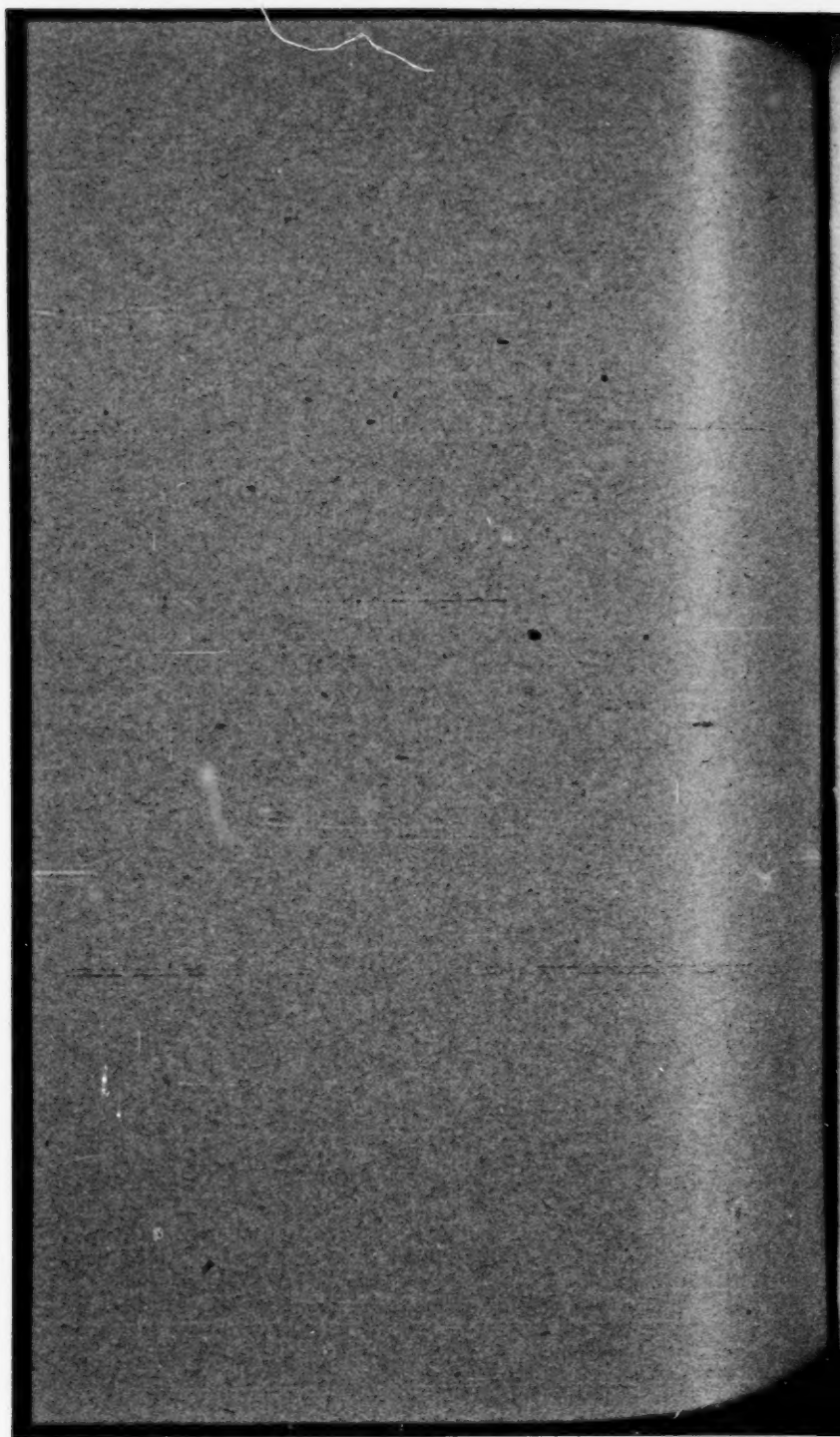
vs.

NATIONAL SURETY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Certiorari filed March 8, 1921.
Certiorari and Return filed May 31, 1921.

(27534)



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PLEAS AND PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AT THE DECEMBER TERM, 1919, OF SAID COURT, BEFORE THE HONORABLE WILLIAM C. HOOK AND THE HONORABLE JOHN E. CARLAND, CIRCUIT JUDGES, AND THE HONORABLE FRANK A. YOUNG, DISTRICT JUDGE.

Attest:

[SEAL.]

E. E. KOCH,
*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to wit, on the ninth day of January, A. D. 1919, a petition to revise an order of the District Court of the United States for the Eastern District of Missouri, with transcript of certain proceedings in said district court, in the matter of Bald Eagle Mining Company, a corporation, bankrupt, in bankruptcy, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, entitled United States, petitioner, and National Surety Company, respondent, which said petition to revise and transcript of certain proceedings, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:



Petition to Revise.

In the United States Circuit Court of Appeals for the
Eighth Circuit.

In the Matter of the Bald Eagle Mining Company, Bankrupt.

United States, Petitioner,

vs.

National Surety Company, Respondent.

To The Honorable Judges of the United States Circuit Court
of Appeals for the Eighth Circuit:

The United States, by Benjamin L. White, Assistant
United States Attorney within and for the Eastern Division
of the Eastern Judicial District of Missouri, respectfully rep-
resents:

That on the 29th day of November, 1916, the Bald Eagle
Mining Company, a corporation, upon its voluntary petition,
was duly adjudicated a bankrupt by the United States Dis-
trict Court within and for the Eastern Division of the Eastern
Judicial District of Missouri, and that upon the same day the
matter of the administration of its bankrupt estate was, by
said United States District Court duly referred to Walter D.
Coles, Esq., Referee in Bankruptcy, in said United States Dis-
trict Court for said Eastern Division of the Eastern District
of Missouri.

That on the 3rd day of November, 1917, the National Surety
Company filed with said Referee, two claims against the es-
tate of said Bankrupt for \$3000.00 and \$150.00, respectively,
and that on the same day said claims were allowed as general
claims against said bankrupt estate.

That on the 12th day of December, 1917, the United States
filed with said Referee its claim for \$9912.84 against
said bankrupt estate, and on the same day, said Referee
made an order allowing said claim of the United States
in said sum of \$9912.84 and ordered and directed that said
claim be accorded priority over all other claims except those
for wages and taxes.

That on the 12th day of March, 1918, after the United
States had secured the allowance of its claim against said
bankrupt as aforesaid, said National Surety Company filed

with said Referee a motion for leave to amend its said claim for \$3000.00 previously allowed as a general claim against said bankrupt estate.

That on the 12th day of March, 1918, after the United States had secured the allowance of its said claim against the estate of said bankrupt as aforesaid said National Surety Company filed with said Referee a motion for leave to amend its claim for \$150.00, previously allowed as a general claim against said bankrupt estate.

That upon the filing by said National Surety Company of the two motions last above mentioned, said Referee set the same down for hearing on March 25th, 1918, at 11:00 o'clock A. M. and caused notice of such hearing to be forwarded by mail, to the Trustee of said bankrupt and to the attorneys of record of the National Surety Company and of the United States.

That thereafter, on the 25th day of March, 1918, at 11:00 o'clock A. M. the above mentioned motion of the National Surety Company for leave to amend its claim for \$3000.00 as aforesaid, came on to be heard before said Referee and upon submission of same to said Referee, said Referee sustained said motion and accorded to said National Surety Company's claim for \$3000.00 like priority as the claim of the United States and ordered that said claim share in the distribution of the bankrupt estate pro rata with the United States.

3 That on the said 25th day of March, 1918, at 11:00 o'clock A. M. the above mentioned motion of the National Surety Company for leave to amend its claim for \$150.00 as aforesaid, came on to be heard before said Referee and upon submission of same to said Referee, said Referee sustained said motion and accorded to said National Surety Company's claim for \$150.00 like priority as the claim of the United States and ordered that said claim share in the distribution of the bankrupt estate pro rata with the United States.

Thereafter upon the 3rd day of April, 1918, the United States filed with said Referee its Petition for Review, praying that the foregoing orders last above named of said Referee, be certified to the Judge of the United States District Court within and for the Eastern Division of the Eastern Judicial District of Missouri for his opinion thereon, and that upon the filing of said Petition of the United States a certificate of review was duly granted by said Referee to said District Court of the United States upon said orders of said Referee allowing said National Surety Company to amend its

said claims as aforesaid and allowing and ordering said claims of said National Surety Company be accorded the same priority as the United States and that said claims be allowed to share in the distribution of said bankrupt estate pro rata with the United States.

That thereafter on the 31st day of December, 1918, said certificate of review came on to be heard by said United States District Court, and upon hearing the same said Court made an order in all respects affirming and approving said orders of said Referee, thereby sustaining the action of said Referee in allowing said National Surety Company to amend its claims as prayed and allowing said claims of the said National Surety Company the same priority as said claim of the United States and allowing said claims of said National Surety Company to share in the distribution of said bankrupt estate pro rata with the United States.

Petitioner states that the order of the United States District Court sustaining, approving and affirming said orders of the Referee aforesaid was and is erroneous as a matter of law in that:

First. Said United States District Court should have held and adjudged that the order of said Referee according to said claims of said National Surety Company the same priority as the claim of the United States and ordering that said claims of said National Surety Company share in the distribution of said bankrupt estate pro rata with the United States were erroneous and should have directed said Referee to change and reform his said orders accordingly, and to deny said National Surety Company's claims the same priority as that of the United States and to deny the right of said National Surety Company's claims to share pro rata in the distribution of said bankrupt estate with the United States.

Second. That said National Surety Company having, on the third day of November, 1917, filed and had allowed its said claims as general claims against said bankrupt estate it could not, by motion, filed on the 12th day of March, 1918, (more than one year after the original claim had been filed and allowed), have said claims amended by making them preferred claims and entitled to the same priority as claims of the United States, such action by said National Surety Company being in effect not an amendment of its said original claims but a substitution of other and different claims, and said United States District Court should have so held and

5 should have directed and ordered said Referee to change and reform his said order accordingly, and to deny said National Surety Company's claims the same priority as the claim of the United States and to deny to said National Surety Company's claims the right to share pro rata with the United States in the distribution of said bankrupt estate.

Wherefore, your Petitioner, feeling aggrieved because of said orders and judgment, prays that the same may be revised in matter of law by this Honorable Court as provided in Section 24 B of the Bankruptcy Act of July 1st, 1898, and the rules of practice in such case provided and that the same be reversed, and for such other and further relief as may be just and proper.

There has been ordered of the clerk of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri, for filing herewith, copies of:

Referee's Certificate of Review and attached papers, Orders of Referee of March 25th, 1918, respecting claims of National Surety Company certified by Referee to Judge of the United States District Court for his opinion thereof, together with all papers thereto attached, opinion of the United States District Court filed on the 31st day of December, 1918, and copy of Order of District Court approving and confirming said orders of said Referee and dismissing petitions of United States for review.

Dated this 8th day of January, 1919.

UNITED STATES, Petitioner.

By Benj. L. White,
Assistant United States Attorney.
Attorney for Petitioner.

6 State of Missouri,
City of St. Louis—ss..

Benjamin L. White, being duly sworn, states that he is an Assistant United States Attorney, for the Eastern District of Missouri, and as such is authorized to make this affidavit on behalf of the Petitioner, and says that the matters and

things stated in the foregoing petition are true to the best of his knowledge and belief.

BENJ. L. WHITE,
Assistant United States Attorney,

Seal
Otto O. Fickeissen
City of St. Louis, Mo.
Notary Public

Subscribed and sworn to before me this
9th day of January, 1919.

OTTO O. FICKEISSEN
Notary Public.

My term expires 2/18/1921.

Filed Jan 9 1919 E. E. Koch, Clerk.

6a Consent to filing of Petition to revise, and Waiver of Notice.

In the United States Circuit Court of Appeals for the Eighth Circuit.

In the matter of Bald Eagle Mining Company Bankrupt.

United States, Petitioner,

vs.

National Surety Company, Respondent.

Now comes the National Surety Company, Respondent, by Fordyce, Holliday, & White, its attorneys of record, and hereby consents to the filing herein by United States, of its Petition to Revise, and hereby waives notice and service of notice thereof.

NATIONAL SURETY COMPANY,
Respondent.

By Fordyce, Holliday & White
Attorneys for Respondent.

Endorsed: Filed in the U. S. Circuit Court of Appeals,
January 9, 1919.

7 (Transcript of Proceedings in the District Court.)

In the District Court of the United States for the
Eastern Division of the Eastern Judicial Dis-
trict of Missouri.

In the Matter of Bald Eagle Mining Company, a corporation,
Bankrupt, In Bankruptcy. No. 2879.

(Certificate of Referee to the District Court.)

I, Walter D. Coles, one of the Referees of said Court in
Bankruptcy, do hereby certify that in the course of the pro-

ceedings in said cause before me, the following questions arose pertinent to the said proceedings:

On November 29, 1916, the Bald Eagle Mining Company, a corporation, was adjudicated bankrupt upon its voluntary petition, and on the same day the case was referred to the undersigned Referee in Bankruptcy for administration. On December 12, 1917, the United States filed with the Referee, its claim against the bankrupt in the sum of \$9912.84, and on the same date, the Referee made an order allowing the claim in the sum of \$9912.84, and in his order directed that the claim be accorded priority over all other claims except wages and taxes. The claim of the United States above mentioned was for damages, sustained by it, by reason of the failure of the bankrupt company to fulfil its contract with the Government for supplying coal at Jefferson Barracks, Missouri, after deducting from said damages the sum of \$3,000.00 paid to the United States by the National Surety Company, the surety on the bond given the United States by the bankrupt in connection with the contract.

Prior to the allowance of the above mentioned claim of the United States, the National Surety Company, on November 3, 1917, filed with the Referee, two claims against the bankrupt for \$3,000.00 and \$150.00, respectively, and these 8 claims were allowed on that date as general claims.

The two claims of the National Surety Company, just mentioned, are hereto attached as part of this certificate.

In its proof of claim for \$3,000.00, the National Surety Company set forth its claim as follows:

"That the said Bald Eagle Mining Company, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of Three Thousand (\$3,000.00) Dollars, that the consideration of said debt is as follows: On June 14, 1916, said National Surety Company executed a contractor's bond in behalf of the Bald Eagle Mining Company to the United States of America, represented by the Quartermasters Corps of the United States Army in the penal sum of Three thousand (\$3,000.00) dollars, which bond secured the faithful performance of a certain contract made by the Bald Eagle Mining Company with the United States of America to furnish bituminous lump coal, required by the United States Army at Jefferson Barracks, Missouri, from June 16, 1916 to June 30, 1917; that in consideration of the execution of said bond, the Bald Eagle Mining Company covenanted and agreed by

an instrument in writing, hereto attached and by reference made a part of this proof, to indemnify and save harmless, the said National Surety Company from any and all liability on said bond; that prior to, and since the filing of said petition for adjudication of bankruptcy, the Bald Eagle Mining Company failed to perform its said contract to furnish the coal and the obligee of said bond was compelled to buy coal on the open market during the period of said contract at prices in excess of the contract price and in a total amount in excess of the penal sum of said bond; that on October 9, 1917, said National Surety Company paid to the United States of America, represented by the Quartermasters Corps of the United States Army, Three Thousand (\$3,000.00) Dollars in satisfaction in full of the liability on said bond:

That no part of the said debt has been paid by the said Bald Eagle Mining Company to said National Surety Company; that there are no set-offs or counter-claims to the same and that said corporation has not, nor has any person by its order, or to the knowledge or belief, of said deponent, for its use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned."

In its proof of claim for \$150.00, the National Surety Company set forth its claim as follows:

"That the said Bald Eagle Mining Company, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of One Hundred and Fifty (\$150.00) Dollars, that the consideration of said debt is as follows: On June 7, 1916 said National Surety Company executed a contractor's bond on behalf of the Bald Eagle Mining Company, to the United States of America, represented by the Quartermasters Corps of the United States Army in the penal sum of One Hundred and Fifty (\$150.00) dollars, which bond covered the faithful performance of a certain contract made by the Bald Eagle Mining Company with the United States of America, to furnish bituminous lump coal to the United States Arsenal of the United States Army at Saint Louis, Missouri, from July 1, 1916 to June 30, 1917; that in consideration of the execution of said bond, the Bald Eagle Mining Company agreed, by an instrument in writing, hereto attached and by reference made a part of this proof, to indemnify and save harmless, said National Surety Company from any and all liability on said bond; that prior to, and

since the filing of said petition for adjudication of bankruptcy, the Bald Eagle Mining Company failed to perform its said contract to furnish the coal and the obligee of said bond was compelled to buy coal on the open market during the period of said contract at prices in excess of the contract price and in a total amount in excess of the penal sum of said bond; that on December 30, 1916, said National Surety Company paid to the United States of America represented by the Quartermasters Corps of the United States Army, One Hundred and Fifty (\$150.00) Dollars in satisfaction in full of the liability on said bond;

That no part of the said debt has been paid by the said Bald Eagle Mining Company to said National Surety Company; that there are no off-sets or counter-claims to the same and that said corporation has not, nor has any reason by its order, or to the knowledge or belief, of said deponent, for its use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned."

On March 12, 1918, after the United States had secured the allowance of its before mentioned claim against the bankrupt company, the National Surety Company filed with the Referee a motion for leave to amend its claim for \$3,000.00, previously allowed as a general claim against the bankrupt, which motion is in words and figures as follows:

"Comes now the National Surety Company, by its attorneys, and requests leave to amend the proof of claim for \$3,000.00 heretofore filed by said National Surety Company against the Bald Eagle Mining Company, Bankrupt, by interlineation and adding thereto as follows:

'And the said National Surety Company, by its attorneys states that the aforesaid claims entitled to priority under the laws of the United States and more particularly under R. S. 3468, 2 Fed. Stat. Ann. (Second Ed.) Page 223, and therefore prays that the aforesaid claim be allowed as a preferred claim and accorded priority over all other claims."

On the same date, namely, March 12, 1918, the National Surety Company filed with the Referee a motion for leave to amend its claim for \$150.00, previously allowed as a general claim against the bankrupt, which motion is in words and figures as follows:

“Comes now the National Surety Company, by its attorneys, and requests leave to amend the proof of claim for \$150.00, herefore filed by said National Surety Company against the Bald Eagle Mining Company, Bankrupt, by interlineation and adding thereto as follows:

“And the said National Surety Company, by its attorneys, states that the aforesaid claim is entitled to priority under the laws of the United States and more particularly under R. S. 3468, 2 Fed. Stat. Ann. (Second Ed.) Page 223, and therefore prays that the aforesaid claim be allowed as a preferred claim and accorded priority over all other claims.

Upon the filing by the National Surety Company of the two motions, above mentioned, the Referee set the same down for hearing on March 25, 1918, at 11 o'clock A. M. and caused notice of such hearing to be forwarded by mail, postage prepaid, to the trustee of the bankrupt and to the attorneys of record of the National Surety Company and of the United States. Thereafter, on March 25, 1918, at 11 o'clock A. M. the above mentioned motions of the National Surety Company came on to be heard before the Referee, and the trustee of the bankrupt and the National Surety Company appeared at said hearing, by their respective attorneys, but the attorney for the United States failed to appear at said hearing. Thereupon, the National Surety Company submitted to the Referee, certain evidence in support of its motions as follows:

1. Letter from R. R. Wood, Captain, Quartermasters Corps, dated, September 19, 1917, respecting coal purchased in open market against contract of Bald Eagle Mining Company, dated June 16, 1916.

2. Statement referred to in the above letter, showing net excess of cost of coal purchased.

3. Release and receipt of United States of America by R. R. Wood, Major, Quartermasters Corps, United States Army for \$3,000.00, dated October 9, 1917.

4. Letter of Lieutenant Colonel Stanley, Quartermasters Corps, dated December 11, 1916, respecting default of Bald Eagle Mining Company, in delivering coal, pursuant to its contract.

5. Release and receipt of United States of America by Lieutenant Colonel D. S. Stanley, Quartermasters Corps, for \$150.00, dated December 30, 1916.

The five documents, last mentioned, are hereto attached as part of this certificate. The record in this case shows
11 that all the property of the bankrupt company has been reduced to money, and that the trustee now has in his hands, the sum of \$8,253.36, which sum, after the payment of the expenses of administration, will be available to the creditors of the bankrupt estate.

On March 25, 1918, the Referee made the following orders respecting the before mentioned claims of the National Surety Company:

March 25, 1918.

It is ordered by the Referee that the motion of the National Surety Company, for leave to amend its claim, heretofore allowed against the bankrupt estate as a general claim, for the sum of \$3,000.00, be, and the same is, hereby sustained and that in respect of said claim, claimant be accorded like priority as the United States and that claimant's said claim share in the distribution of the estate pro rata with the United States."

March 25, 1918.

"It is ordered by the Referee that the motion of the National Surety Company, for leave to amend its claim, heretofore allowed against the bankrupt estate as a general claim, for the sum of \$150.00, be, and the same is, hereby sustained and that in respect of said claim, claimant be accorded like priority as the United States and that claimant's said claim share in the distribution of the estate pro rata with the United States."

Thereafter on April 3, 1918, the United States filed with the Referee, its petitions (hereto attached) praying that the foregoing orders of the Referee be certified to the Judge for his opinion thereon, and said orders are certified accordingly.

(Signed) WALTER D. COLES,
Referee in Bankruptcy.

April 30, 1918.

12 (Memorandum Opinion of the Referee on claims of National Surety Company.)

It is provided by Section 3468, Revised Statutes of the United States, that the surety on a bond, given to the United States, where the principal in the bond is insolvent, upon paying the money due upon such bond "shall have the like prior-

ity for the recovery and receipt of the moneys out of the estate and effects of such insolvent ** as is secured to the United States". In the case of *Hunter vs. United States*, 5 Peters 173 l. c. 182, the Supreme Court of the United States in construing this Statute, held that "like priority" means that "the same right of priority which belongs to the Government attaches to the claim of an individual, who, as surety, has paid money to the Government." Under the terms of the Statute, and especially, under the construction given the Statute in the case just mentioned, it seems clear that the National Surety Company is entitled to have its two claims against the bankrupt stand upon the same footing, as the claim of the Government and to share in the distribution of the estate on an equality with the Government, and an order will be entered accordingly.

- 13 (Claim for \$3000.00, of the National Surety Company, against the Bald Eagle Mining Company, filed with the Referee, on November 3, 1917.)

(Applicants must supply copy of contract specifications and other documents which are referred to and made a part of this contract.)

To be used without change by individuals, co-partnerships, and corporations for Contract or Proposal Bonds.

Application for Contract Bond.

882784.

Notice! Agents' acts not binding on Company unless within agents' written limits of authority.

To the National Surety Company (hereinafter called the Company):

The undersigned desires the Company to execute bond for it in the sum of \$3,000.00 in favor of U. S. A. represented by Q. M. Corps, U. S. Army of and in such form as may be satisfactory to the Company and the above, the principal object of such bond being to guarantee the performance of a certain contract as hereinafter described. The undersigned guarantees the truth of all answers to the following interrogatories, and further guarantees the truth and accuracy of the undersigned's financial statement filed concurrently with this application. (If no financial statement is so filed, the undersigned guarantees that the last previous statement deposited with the Company represented at that time the undersigned's true and accurate financial condition and that the present net assets of the undersigned are approximately

false statement is guilty of a misdemeanor punishable by fine or imprisonment or both.

the same or more than as set forth in such previous financial statement.)

1. Applicant's name in full? Bald Eagle Mining Company.

2. Business address? (Street, City and State) Century Bldg., St. Louis, Missouri.

3. If Proposal bond, the probable total of contract is \$..... and the undersigned agrees to pay \$..... premium for said Proposal bond and agrees that the Company shall execute the final or contract bond if required, should the undersigned be awarded the contract, unless the Company declines so to do, which right the undersigned hereby specifically grants to the Company.

4. The amount of the contract is \$8,904.00 and the undersigned hereby agrees to pay to the Company, as a premium or charge for the bond applied for, the rate of \$2.50 per \$1,000 of contract amount, in advance, for the first year (...) or fraction thereof and \$2.50 per \$1,000 annually thereafter until the undersigned shall serve upon the Company at its principal office in the City of New York, conclusive written evidence of its discharge and release from any and all liability upon said bond and all matters arising therefrom. Should the contract exceed the said amount, the undersigned agrees to pay to the Company as additional premium for such excess, a further sum, calculated at the same rates per \$1,000; such additional premium to be chargeable as above from the date of the award of such additional work.

If there be any maintenance or guarantee of the contract after completion, the undersigned agrees to pay a further premium for such period of \$..... per \$1,000 of contract amount annually, such premium, however, to be paid in advance for the full term thereof.

5. Nature of Contract? (Give locality and description of work) for furnishing bituminous lump coal required at Jefferson Barracks, Missouri, from June 16th, 1916, to June 30th, 1917.

6. Maintenance period after completion?
What guarantees of tests? If but part of the contract is guaranteed, what part and contract price therefor?

7. Is contractor made liable for loss, or injury, to persons? To property?

8. Give name and address of architect or engineer in charge. Depot Quartermaster.

9. What is his estimate of cost of work? \$.....
Your estimate? \$.....

10. When must work begin? As required. When must it be finished?

11. Penalty for non-completion on time? \$.....
Premium for advance completion? \$.....

12. Payments, when to be made on contract? monthly.
Reserve?

13. Are payments to be made in Cash? yes. If not wholly in cash, in what manner?

14. How much will be sublet? nil. Will sub-contractors furnish surety bonds?

15. What insurance do and will you carry on this contract? Fire:

Name and Amount.

Public Liability	Emp. Liability
Name of Company.....	Name of Company.....
Amount of policy \$.....	Amount of policy \$.....
Date policy expires.....	Date policy expires.....

16. Is compensation insurance carried? Name of Insurer

17. Names of Other Bidders on above contract, including highest and lowest?

Name	Address	Bid
(1) unknown	\$.....
(2)	\$.....
(3)	\$.....
(4)	\$.....
(5)	\$.....

18. Have you applied elsewhere for this bond? no. State name of company and why declined

19. What other surety companies have you dealt with?

20. What other similar contracts have you completed On Your Own Account?

.....

21. State particulars of Present Uncompleted Contracts:

Description	Location	Total of Contract	Amount Completed	Probable Date of Completion
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....

22. With what bank have you arranged a loan for the purpose of handling this contract?

23. What is the amount of such loan? \$.....

24. What security, if any, has the bank required for the loan?

25. When and how must you repay the loan?

26. Have you assigned or will you assign your payment on this contract, or any part thereof?

27. Is your present plant sufficient for this contract?....
.....If not, state what needed and expenditure necessary

28. Are you surety or endorser upon any bond, note, or other obligation not included in your liabilities?

If so, give names and amounts

29. Are you having Any controversy with Any one over Any contract or payment of labor or material bills on Any contract?

30. Are there Any mechanics' liens filed on Any of your work anywhere?

31. Are there any judgments against you?

32. Have you ever failed in business?

33. Are you threatened with any law suits?

Are you interested in more than one line of business?

If so, give particulars

34. If a Corporation, answer these questions: Capital paid in cash? \$..... In what State incorporated?

When? Principal Office?

President's name? Vice-President's name?

Secretary's name?

Treasurer's name? Directors' names?

35. If a Co-Partnership, give the names of all individuals composing same:

Name	Address	Age
.....
.....

If a special partnership, give name of special partner and amount obligated for:

.....

36. In what company are your employes bonded?
 Do their bonds expire during the life of this
 contract? Give date

References.

Name	Occupation	Address
(1).....
(2) see previous applications
(2).....
(3).....
(4).....
(5).....

14 In Consideration of the execution of said bond by the National Surety Company (hereinafter called the Company), the undersigned hereby covenants with the Company, its successors and assigns:

1st. To furnish to the Company upon request, the complete figures showing the full amount of contract herein referred to, or the Company may, at its option apply to the obligee for such information, which the obligee is hereby authorized to furnish, and the Company is authorized to inspect the books of the undersigned relating thereto, for the purpose of ascertaining the correct amounts.

2nd. That in the event the Company executes said bond with Co-sureties or reinsures any portion of said bond with Reinsuring Companies, or procures the execution of said bond, the undersigned agrees that all of the terms and conditions of this agreement shall apply and operate for the benefit of the Company, the Co-sureties, the Re-insuring Companies and the procured sureties, as their interests may appear.

3rd. That the undersigned will at all times indemnify and keep indemnified, the Company, and hold and save it harmless from and against any and all liability, damages, loss, costs, charges and expenses of whatever kind or nature, including counsel and attorney's fees, which the Company shall

or may, at any time, sustain or incur by reason or in consequence of having executed the bond herein applied for, or by reason or in consequence of the execution by the Company of any and all other bonds executed for us at our instance and request, and that we will pay over, reimburse and make good to the Company, its successors and assigns, all sums and amounts of money which the Company or its representatives shall pay, or cause to be paid, or become liable to pay, on account of the execution of any such instrument, and on account of any liability, damage, costs, charges and expenses of whatsoever kind or nature, as well, also, in connection with any litigation, investigation, collecting any premium due or losses sustained or other matters connected therewith, including counsel and attorney's fees, such payment to be made to the Company as soon as it shall have become liable therefor, whether the Company shall have paid said sum or any part thereof or not. That in any accounting which may be had between the undersigned and the Company, the Company shall be entitled to credit for any and all disbursements in and about the matters herein contemplated, made by it in good faith under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether such liability, necessity, or expediency existed or not.

4th. That in the event of the failure of the undersigned to comply with or make due performance of any covenant hereof, the Company may at any time thereafter take such steps as it may deem necessary or proper to obtain its release from all liability under any and every such bond, and to secure and further indemnify itself against loss, and all damage and expense which the Company may sustain or incur, or be put to in obtaining such release, or in further securing itself against loss, shall be borne and paid by the undersigned.

5th. That for the better protection of the Company, the undersigned does, as of the date hereof, hereby assign, transfer and convey to the Company, all the right, title and interest of the undersigned in and to all the tools, plant, equipment and materials of every nature and description that it may now or hereafter have upon said work, or in, on or about the site thereof, including, as well, materials purchased for or chargeable to said contract, which may be in process of construction, on storage elsewhere, or in transportation to said site, hereby assigning and conveying also, all its rights in and to all sub-contracts, which have been or may hereafter be en-

15 tered into, and the materials embraced therein, and authorizing and empowering the Company, its authorized agents or attorneys, to enter upon and take possession of said tools, plant, equipment, materials and sub-contracts, and enforce, use and enjoy such possession upon the following conditions, viz.: This assignment shall be in full force and effect, as of the date hereof, should the undersigned fail or be unable to complete the said work in accordance with the terms of the contract covered by said bond, or in event of any default on the undersigned's part under the said contract or in the payment of premiums.

6th. That in further consideration of the execution of said bond, the undersigned hereby assigns, transfers and conveys to the Company all the deferred payments and retained percentages, and any and all moneys and properties that may be due and payable to the undersigned at the time of any breach or default in said contract, or that thereafter may become due and payable to the undersigned on account of said contract, or on account of extra work or materials supplied in connection therewith, hereby agreeing that such money, and the proceeds of such payments and properties shall be the sole property of the Company and to be by it credited upon any loss, cost, damage, charge and expense sustained or incurred by it under said bond.

7th. That in the event the Company is required to reserve from its assets an amount to cover any contingent claim or claims under the bond herein applied for, by reason of default of the undersigned, abandonment of contract, liens filed, dispute with the owner or obligee, or for any other reason whatsoever, the undersigned hereby covenants and agrees to immediately on demand deposit with the Company, in current funds, an amount sufficient to cover any such contingent claim or claims, as a trust fund or collateral security, to be held by the Company as indemnity on the bond herein applied for, in addition to the indemnity afforded by this instrument; and if the Company is required to enforce performance of this covenant by action at law or in equity, the costs, charges and expenses, including counsel or attorney's fees, which it may thereby incur, shall be included in such action and paid by the undersigned.

8th. That the undersigned further authorizes and empowers any attorney in any State of the United States on behalf of the Company, to appear for the undersigned, and confess judgment against the undersigned, for any sum or

sums of money up to the amount of the bond executed by the Company upon the faith and security afforded by the undersigned under this agreement, with costs, interest and counsel or attorney's fees; this authority to continue until the Company's liability under the bond shall have wholly terminated. Whenever the laws of any State shall provide a method for confession of judgment to which the authority hereby given will not apply, the undersigned further agrees to execute upon the company's demand such papers as will carry into effect the entry of judgment by confession as above agreed against the undersigned.

9th. That no act or omission of the Company, in modifying, amending, limiting, or extending any instrument executed by the Company, shall in any wise affect the undersigned's liability hereunder, and the undersigned agrees that the Company may alter, change, modify, amend, limit, or extend any instrument, and may execute renewals thereof, or other and new obligations in its place, or in lieu thereof, and without notice to the undersigned, notice being expressly waived, and in any such case, the undersigned shall be liable to the Company as fully and to the same extent on account of any such altered, changed, modified, amended, limited or extended instrument, of such renewals thereof, or other or new obligations in its place or in lieu thereof, as fully as if such instrument were described at length herein.

16 10th. That it shall not be necessary for the Company to give the undersigned notice of any act, fact or information coming to the notice or knowledge of the Company concerning or affecting its rights or liability under any such instrument by it so executed, or the undersigned's rights or liabilities hereunder, notice of all such being hereby expressly waived.

11th. That these covenants and also all collateral security, if any, at any time deposited with the Company concerning the said bond or any other former or subsequent bonds, executed for the undersigned or at its instance, shall, at the option of the Company, be available in its behalf and for its benefit as well concerning the bond or undertaking hereby applied for, as also concerning all other former or subsequent bonds and undertaking executed for us or for others at our request.

12th. That the Company shall have the exclusive right for itself, and for the undersigned, to decide and determine whether any claim, demand, liability, suit, action, order, judg-

ment or adjudication, made or brought against the Company and principal on said bond, jointly or severally, shall or shall not be defended, tried or appealed, and its decisions shall be final, conclusive and binding upon the undersigned, and any order, judgment or adjudication made, entered or affirmed as a result thereof, or any loss, cost, charge, expense or liability thereby incurred, sustained or paid, shall be borne by the undersigned, and the undersigned especially consents thereto.

Dated at St. Louis Missouri this 14th day of July 1916.

(Signed) BALD EAGLE MINING CO.

By O. L. Winkle, Pres.

(Officer's name and title if applicant
be a corporation)

Note,—If a co-partnership, firm name must be signed, also name of individual who signs. If corporation, corporate name must be signed in full, with officer's name and title on line below.

17 State of.....

County of.....—ss.

On this day of, 19...., before me personally came, to me known and known to me to be the individual described in and who executed the foregoing agreement, and acknowledged that he executed the same.

State of.....

County of.....—ss.

On the day of, 19...., before me personally came, to me known, and who, being duly sworn, did depose and say: That he resides in; that he is the..... of, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

State of.....

County.....—ss.

On this day of, 19...., before me personally came, to me known and known to me to be a member of the firm of, described in and

who executed the foregoing agreement, and acknowledged that he executed the same as and for the act and deed of said firm.

18 (Proof of Claim of National Surety Company, for \$3000.00.)

At St. Louis, in said Division of said District on the third day of November, A. D. 1917, came Leslie J. Nichols of the City of St. Louis and State of Missouri, and made oath and says that he is Resident Secretary of the National Surety Company, a corporation incorporated by and under the laws of the State of New York and that he is duly authorized to make this proof, and says that the said Bald Eagle Mining Company, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of Three Thousand (\$3,000.00) Dollars, that the consideration of said debt is as follows: On July 14, 1916, said National Surety Company executed a contractor's bond in behalf of the Bald Eagle Mining Company to the United States of America, represented by the Quartermasters Corps of the United States Army in the penal sum of Three thousand (\$3,000.00) Dollars which bond secured the faithful performance of a certain contract made by the Bald Eagle Mining Company with the United States of America to furnish bituminous lump coal required by the United States Army at Jefferson Barracks, Missouri, from June 16, 1916 to June 30, 1917; that in consideration of the execution of said bond, the Bald Eagle Mining Company covenanted and agreed by an instrument in writing, hereto attached and by reference made a part of this proof, to indemnify and save harmless, the said National Surety Company for any and all liability on said bond; that prior to, and since the filing of said petition for adjudication of bankruptcy, the Bald Eagle Mining Company failed to perform its said contract to furnish the coal and the obligee of said bond was compelled to buy coal on the open market during the period of said contract at prices in excess of the contract price and in a total amount in excess of the penal sum of said bond; that on October 9, 1917, said National Surety Company paid to the United States of America, represented by the Quartermasters Corps of the United States Army, Three Thousand (\$3,000.00) Dollars in satisfaction in full of the liability on said bond;

That no part of the said debt has been paid by the said Bald Eagle Mining Company to said National Surety Company; that there are no set-offs or counter-claims to the same and that said corporation has not, nor has any person by its order, or to the knowledge or belief, of said deponent, for its use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned.

NATIONAL SURETY COMPANY,

L. J. Nichols,

Resident Secretary of said Company.

Subscribed and sworn to before me this 3rd day of November, A. D. 1917.

(Seal)

(Signed) MARIE E. PAUCK,
Notary Public.

My commission expires 5-3-19.

20 (Claim for \$150.00, of the National Surety Company against the Bald Eagle Mining Company, filed with the Referee, on November 3, 1917.)

(Applicants Must Supply Copy of Contract Specifications and Other Documents which are Referred to and made a part of this Contract.)

To be used without change by individuals, co-partnerships, and corporations for Contract or Proposal Bonds.

Application for Contract Bond.

897872
Notice! Agents' acts not binding on Company unless within agents' written limits of authority.

To the National Surety Company (hereinafter called the Company):

The undersigned desires the Company to execute bond for it in the sum of \$150.00 in favor of United States of America of U. S. A. and in such form as may be satisfactory to the Company and the above, the principal object of such bond being to guarantee the performance of a certain contract as hereinafter described. The undersigned guarantees the truth of all answers to the following interrogatories, and further guarantees the truth and accuracy of the undersigned's financial statement filed concurrently with this application. (If no financial statement is so filed, the undersigned guarantees that

the last previous statement deposited with the Company represented at that time the undersigned's true and accurate financial condition and that the present net assets of the undersigned are approximately the same or more than as set forth in such previous financial statement.)

1. Applicant's Name in Full? Bald Eagle Mining Company, Inc. Received

2. Business address? (Street, City and State) 504 Century Bldg., St. Louis, Mo. June 9, 1916.

3. If Proposal bond, the probable total of contract is \$.... and the undersigned agrees to pay City Com*** Dept. premium for said Proposal bond and agrees that the Company shall execute the final or contract bond if required, should the undersigned be awarded the contract, unless the Company declines so to do, which right the undersigned hereby specifically grants to the Company.

4. The Amount of the Contract is \$840.00 (Est) and the undersigned hereby agrees to pay to the Company, as a Premium or charge for the bond applied for, the rate of \$2.50 per \$1,000 of contract amount, in advance, for the first..... year () or fraction thereof and \$2.50 per \$1,000 annually thereafter until the undersigned shall serve upon the Company at its principal office in the City of New York, conclusive written evidence of its discharge and release from any and all liability upon said bond and all matters arising therefrom. Should the contract exceed the said amount, the undersigned agrees to pay to the Company as additional premium for such excess, a further sum, calculated at the same rates per \$1,000; such additional premium to be chargeable as above from the date of the award of such additional work.

If there be any maintenance or guarantee of the contract after completion, the undersigned agrees to pay a further premium for such period of \$..... per \$1,000 of contract amount annually, such premium, however, to be paid in advance for the full term thereof.

5. Nature of Contract? (Give locality and description of work) to Supply Coal at U. S. Arsenal St. Louis, Mo. for fiscal year 1916 1917.

6. Maintenance period after completion?..... What guarantees of tests?..... If but part of the contract is guaranteed, what part and contract price therefor?.....

7. Is contractor made liable for loss, or injury, to persons?
.....To property?

8. Give name and address of architect or engineer in charge
Lient. Colonel D. S. Stanley U. S. Army.

9. What is his estimate of cost of work? \$840.00 Your
estimate? \$840.00

10. When must work begin? July 1st. 1916. When must
it be finished? June 30th, 1917.

11. Penalty for non-completion on time? \$ none Premium
for advance completion? \$.....

12. Payments, when to be made on contract?.....
.....Reserve?.....

13. Are payments to be made in Cash? Yes. If not wholly
in cash, in what manner?.....

14. How much will be sublet? none Will sub-contractors
furnish surety bonds?.....

15. What insurance do and will you carry on this contract?
Fire:
Name and Amount

Public Liability	Emp. Liability
Name of Company.....	Name of Company.....
Amount of policy \$.....	Amount of policy \$.....
Date policy expires.....	Date policy expires.....

16. Is compensation insurance carried?.....
Name of Insurer

17. Names of Other Bidders on above contract, including
highest and lowest?

Name	Address	Bid
------	---------	-----

(1)	\$.....
(2)	\$.....
(3)	\$.....
(4)	\$.....
(5)	\$.....

18. Have you applied elsewhere for this bond? no State
name of company and why declined.....
.....

19. What other surety companies have you dealt with?
see your files

20. What other similar contracts have you completed On
Your Own Account?....see your files

21. State particulars of President Uncompleted Contracts:

Description	Location	Total of Contract	Amount Completed	Prob. Date of Comp.
.....	\$.....	\$.....
All Completed	\$.....	\$.....
.....	\$.....	\$.....

22. With what bank have you arranged a loan for the purpose of handling this contract?.....

23. What is the amount of such loan? \$.....

24. What security, if any, has the bank required for the loan?

25. When and how must you repay the loan?.....

26. Have you assigned or will you assign your payment on this contract, or any part thereof? No.

27. Is your present plant sufficient for this contract? yes
If not, state what needed and expenditure necessary.....

28. Are you surety or endorser upon any bond, note, or other obligation not included in your liabilities? no If so, give names and amounts.....

29. Are you having Any controversy with Any one over Any contract or payment of labor or material bills on Any contract? no.

30. Are there Any mechanics' liens filed on Any of your work anywhere? no

31. Are there any judgments against you? no

32. Have you ever failed in business? no

33. Are you threatened with any law suits? no

Are you interested in more than one line of business?

.....
If so, give particulars.....

34. If A Corporation, answer these questions: Capital paid
in cash? \$.....

In what State incorporated? See your Files

When?Principal Office?

President's name?.....Vice-President's name?.....

Secretary's name?.....Treasurer's name?.....

Directors' names?

35. If A Co-Partnership, give the names of all individuals composing same:

Name

Address

Age

X X

If a special partnership, give name of special partner and amount obligated for:

36. In what company are your employes bonded? National Surety Company.

Do their bonds expire during the life of this contract?.....

Give date

References.

Name

Occupation

Address.

(1).....

(2) See Your Files.

(3).....

(4).....

(5).....

21 In Consideration of the execution of said bond by the National Surety Company (hereinafter called the Company), the undersigned hereby covenants with the Company, its successors and assigns:

1st. To furnish to the Company upon request, the complete figures showing the full amount of contract herein referred to, or the Company may, at its option apply to the obligee for such information, which the obligee is hereby authorized to furnish, and the Company is authorized to inspect the books of the undersigned relating thereto, for the purpose of ascertaining the correct amounts.

2nd. That in the event the Company executes said bond with Co-sureties or reinsures any portion of said bond with Reinsuring Companies, or procures the execution of said bond, the undersigned agrees that all of the terms and con-

ditions of this agreement shall apply and operate for the benefit of the Company, the Co-sureties, the Reinsuring Companies and the procured sureties, as their interests may appear.

3rd. That the undersigned will at all times indemnify and keep indemnified, the Company, and hold and save it harmless from and against any and all liability, damages, loss, costs, charges and expenses of whatever kind or nature, including counsel and attorney's fees, which the Company shall or may, at any time, sustain or incur by reason or in consequence of having executed the bond herein applied for, or by reason or in consequence of the execution by the Company of any and all other bonds executed for us at our instance and request, and that we will pay over, reimburse and make good to the Company, its successors and assigns, all sums and amounts of money which the Company or its representatives shall pay, or cause to be paid, or become liable to pay, on account of the execution of any such instrument, and an account of any liability, damage, costs, charges and expenses of whatsoever kind or nature, as well, also, in connection with any litigation, investigation, collecting any premium due or losses sustained or other matters connected therewith, including counsel and attorney's fees, such payment to be made to the Company as soon as it shall have become liable therefor, whether the Company shall have paid said sum or any part thereof or not. That in any accounting which may be had between the undersigned and the Company, the Company shall be entitled to credit for any and all disbursements in and about the matters herein contemplated, made by it in good faith under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether such liability, necessity, or expediency existed or not.

4th. That in the event of the failure of the undersigned to comply with or make due performance of any covenant hereof, the Company may at any time thereafter take such steps as it may deem necessary or proper to obtain its release from all liability under any and every such bond, and to secure and further indemnify itself against loss, and all damage and expense which the Company may sustain or incur, or be put to in obtaining such release, or in further securing itself against loss, shall be borne and paid by the undersigned.

5th. That for the better protection of the Company, the undersigned does, as of the date hereof, hereby assign, transfer

and convey to the Company, all the right, title and interest of the undersigned in and to all the tools, plant, equipment and materials of every nature and description that it may now or hereafter have upon said work, or in, on or about the site thereof, including, as well, materials purchased for or chargeable to said contract, which may be in process of construction, on storage elsewhere, or in transportation to said site, hereby assigning and conveying also, all its rights in and to all sub-contracts, which have been or may hereafter be entered

22 into, and the materials embraced therein, and authorizing and empowering the Company, its authorized agents or attorneys, to enter upon and take possession of said tools, plant, equipment, materials and sub-contracts, and enforce, use and enjoy such possession upon the following conditions, viz.: This assignment shall be in full force and effect, as of the date hereof, should the undersigned fail or be unable to complete the said work in accordance with the terms of the contract covered by said bond, or in event of any default on the undersigned's part under the said contract or in the payment of premiums.

6th. That in further consideration of the execution of said bond, the undersigned hereby assigns, transfers and conveys to the Company all the deferred payments and retained percentages, and any and all moneys and properties that may be due and payable to the undersigned at the time of any breach or default in said contract, or that thereafter may become due and payable to the undersigned on account of said contract, or on account of extra work or materials supplied in connection therewith, hereby agreeing that such money, and the proceeds of such payments and properties shall be the sole property of the Company and to be by it credited upon any loss, cost, damage, charge and expense sustained or incurred by it under said bond.

7th. That in the event the Company is required to reserve from its assets an amount to cover any contingent claim or claims under the bond herein applied for, by reason of default of the undersigned, abandonment of contract, liens filed, dispute with the owner or obligee, or for any other reason whatsoever, the undersigned hereby covenants and agrees to immediately on demand deposit with the Company, in current funds, an amount sufficient to cover any such contingent claim or claims, as a trust fund or collateral security, to be held by the Company as indemnity on the bond herein applied for, in addition to the indemnity afforded by this instrument; and if the Company is required to enforce performance of this covenant by action at law or in equity, the costs, charges and

expenses, including counsel or attorney's fees, which it may thereby incur, shall be included in such action and paid by the undersigned.

8th. That the undersigned further authorizes and empowers any attorney in any State of the United States on behalf of the Company, to appear for the undersigned, and confess judgment against the undersigned, for any sum or sums of money up to the amount of the bond executed by the Company upon the faith and security afforded by the undersigned under this agreement, with costs, interest and counsel or attorney's fees; this authority to continue until the Company's liability under the bond shall have wholly terminated. Whenever the laws of any State shall provide a method for confession of judgment to which the authority hereby given will not apply, the undersigned further agrees to execute upon the company's demand such papers as will carry into effect the entry of judgment by confession as above agreed against the undersigned.

9th. That no act or omission of the Company, in modifying, amending, limiting, or extending any instrument executed by the Company, shall in any wise affect the undersigned's liability hereunder, and the undersigned agrees that the Company may alter, change, modify, amend, limit, or extend any instrument, and may execute renewals thereof, or other and new obligations in its place, or in lieu thereof, and without notice to the undersigned, notice being expressly waived, and in any such case, the undersigned shall be liable to the Company as fully and to the same extent on account of any such altered, changed, modified, amended, limited or extended instrument, of such renewals thereof, or other or new obligations in its place or in lieu thereof, as fully as if such instrument were described at length herein.

23 10. That it shall not be necessary for the Company to give the undersigned notice of any act, fact or information coming to the notice or knowledge of the Company concerning or effecting its rights or liability under any such instrument by it so executed, or the undersigned's rights or liabilities hereunder, notice of all such being hereby expressly waived.

11th. That these covenants and also all collateral security, if any, at any time deposited with the Company concerning the said bond or any other former or subsequent bonds, executed for the undersigned or at its instance, shall, at the option of the Company, be available in its behalf and for its benefit as well concerning the bond or undertaking hereby

applied for, as also concerning all other former or subsequent bonds and undertaking executed for us or for others at our request.

12th. That the Company shall have the exclusive right for itself, and for the undersigned, to decide and determine whether any claim, demand, liability, suit, action, order, judgment or adjudication, made or brought against the Company and principal on said bond, jointly or severally, shall or shall not be defended, tried or appealed, and its decisions shall be final, conclusive and binding upon the undersigned, and any order, judgment or adjudication made, entered or affirmed as a result thereof, or any loss, cost, charge, expense or liability thereby incurred, sustained or paid, shall be borne by the undersigned, and the undersigned especially consents thereto.

Dated at St. Louis, Mo. this 7th [day] of June 1916

BALD EAGLE MINING CO.

By F. S. Collier, Secy.

(Officer's name and title if applicant be a corporation)

Witness to [signature]

L. J. Nichols,

Note,—If a co-partnership, firm name must be signed, also name of individual who signs. If corporation, corporate name must be signed in full, with officer's name and title on line below.

24 State of.....

County of.....—ss.

On this.....day of....., 19...., before me personally came to me known and known to me to be the individual described in and who executed the foregoing agreement, and..... acknowledged that he executed the same.

State of.....

County of.....—ss.

On theday of....., 19...., before me personally came....., to me known, and who, being duly sworn, did depose and say: That he resides in.....; that he is theof....., the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said

corporation, and that he signed his name to the said instrument by like order.

State of.....

County of.....—ss.

On this.....day of....., 19...., before me personally came, to me known and known to me to be a member of the firm of....., described in and who executed the foregoing agreement, and acknowledged that he executed the same as and for the act and deed of said firm.

25 (Proof of Claim of National Surety Company for \$150.00.)

At St. Louis, in said Division of said District on the third day of November, A. D. 1917, came Leslie J. Nichols of the City of St. Louis and State of Missouri, and made oath and says that he is Resident Secretary of the National Surety Company, a corporation incorporated by and under the laws of the State of New York and that he is duly authorized to make this proof, and says that the said Bald Eagle Mining Company, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of One Hundred and Fifty (\$150.00) Dollars, that the consideration of said debt is as follows: On June 7, 1916, said National Surety Company executed a contractor's bond on behalf of the Bald Eagle Mining Company, to the United States of America, represented by the Quartermasters Corps of the United States Army in the penal sum of One Hundred and Fifty (\$150.00) Dollars which bond covered the faithful performance of a certain contract made by the Bald Eagle Mining Company with the United States of America, to furnish bituminous lump coal to the United States Arsenal of the United States Army at Saint Louis, Missouri from July 1, 1916 to June 30, 1917; that in consideration of the execution of said bond, the Bald Eagle Mining Company agreed, by an instrument in writing, hereto attached and by reference made a part of this proof, to indemnify and save harmless, said National Surety Company from any and all liability on said bond; that prior to, and since the filing of said petition for adjudication of bankruptcy, the Bald Eagle Mining Company failed to perform its said contract to furnish the coal and the obligee of said bond was compelled to buy coal on the open market during the period of said contract at prices in

excess of the contract price and in a total amount in excess of the penal sum of said bond; that on December 30, 1916 said National Surety Company paid to the United States of America, represented by the Quartermasters Corps of the United States Army, One Hundred and Fifty (\$150.00) Dollars in satisfaction in full of the liability on said bond;

That no part of the said debt has been paid by the said Bald Eagle Mining Company to said National Surety Company; that there are no set-offs or counter-claims to the same and that said corporation has not, nor has any person by its order, or to the knowledge or belief, of said deponent, for its use, had or received any manner of security for said debt whatever, and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned.

NATIONAL SURETY COMPANY,
(Signed L. J. Nichols,
Resident Secretary. Of said
Company.

Subscribed and sworn to before me third 3rd day of November, A. D. 1917.

(Seal)

(Signed) MARIE E. PAUCK,
Notary Public.

My commission expires May 3-1919.

27

Office of the Quartermaster.

Recruit Depot.

Jefferson Barracks, Mo.

September 19, 1917.

From: The Quartermaster.
To: National Surety Company,
Pierce Building, St. Louis, Mo.

Subject: Coal purchased in open market against contract of Bald Eagle Mining Company, dated June 16th, 1916.

1. Your attention is called to enclosed statement showing net excess cost of coal purchased in open market by this office against Bald Eagle Mining Co.

2. Under and in accordance with the terms of the bond, executed by your company, for the faithful fulfillment of said contract, demand is hereby made upon you for payment of

the amount of said excess of \$12,912.84. Unless settlement in full is made by twelve o'clock noon, September 26, 1917, the case will be submitted to the Department of Justice for Legal action in the premises.

3. A similar demand has this date been made upon the Trustee in Bankruptcy for the Bald Eagle Mining Company.

R. R. WOOD,
Captain, Quartermaster Corps.

1 Incl.
AAL:S

STATEMENT OF BITUMINUS COAL PURCHASED IN
OPEN MARKET AGAINST CONTRACT OF BALD EAGLE MINING CO. DATED 6/16/16.

Coal purchased From	Delivery Made	Pounds	Tons	Price		Date		WMC. QM Analysis		R. R. Wood of mines To Bald Eagle Company.		Value at
				Per	Ton	Paid	Amount	Paid	Company.			
John Eichborn,	11-29-16	261500	130.75	\$5.275	12/6/16	\$689.71	14	\$251.30			\$436.41	
Wm. F. Ruprecht Const. & Inv. Co.	12-4-16	131280	65.64	5.20	12/12/16	341.33	39	126.16			215.17	
Big Muddy Coal & Iron Co.	12/7/16	95740	47.87	4.80	12/14/16	229.78	85	92.01			137.77	
Wm. F. Ruprecht Const. & Inv. Co.	12/11/16	214470	107.235	5.00	12/20/16	536.18	119	206.10			330.08	
Inland Valley Coal Co.	12/30/16	834520	417.26	3.65	1/8/17	1523.00	14	801.97			721.03	
Donk Bros. Coal & Coak Co.	1/9/17	318080	159.04	4.65	1/15/17	739.54	52	305.67			433.87	
Donk Bros. Coal & Coak Co.	1/4/17	897800	448.93	3.625	1/15/17	1627.37	53	862.84			764.53	
Wm. F. Ruprecht Const. & Inv. Co.	1/18/17	1013790	506.895	4.45	1/27/17	2255.68	130	974.25			1281.43	
James C. Blythe,	1/31/17	800050	403.025	4.35	2/23/17	1753.16	106	774.61			978.55	
James C. Blythe,	3/23/17	2491510	1245.755	4.35	5/5/17	5227.19	51	2395.54			2831.85	
James C. Blythe,	5/17/17	3788410	1894.205	4.35	5/19/17	8239.79	179	3640.66			4599.13	
James C. Blythe,	6/27/17	659380	329.69	4.35	7/5/17	1434.15	15	633.66			800.49	

Total Excess due United States by Bald Eagle Mining Company.

R. R. Wood
Captain Quartermaster Corps'

Contract price modified in accordance with analysis of B/M of Deliveries made under contract.

(Release and Receipt for \$3000.00)

This Release and Receipt, dated this 9th day of October 1917, by and between the United States of America, represented by Captain, R. R. Wood, Quartermasters' Corp, United States Army, party of the first part and the National Surety Company of the City of New York, State of New York, party of the second part, Witnesseth:

Whereas, on or about the fourteenth day of July 1916, said party of the second part executed in behalf of the Bald Eagle Mining Company, as principal, contractors' bond 882784, indemnifying the United States of America, Quartermasters' Depot, for the faithful performances of said principal, Bald Eagle Mining Company to furnish bituminous lump coal required by the United States Army, at Jefferson Barracks, Missouri, from June 16th, 1916 to June 30th, 1917, said bond being in the penal sum of Three Thousand Dollars, (\$3000.00).

And Whereas, said Bald Eagle Mining Company has failed to carry out the terms and conditions of said bond and contract with the party of the first part and said party of the first was required to fill said contract on the open market and said party of the first part did buy coal on the open market at the best price obtainable and the amount due under said bond from the party of the second part to the party of the first is the sum of Three Thousand Dollars, (\$3,000.00).

Now Therefore, for and in consideration of the sum of Three Thousand Dollars, (\$3000.00) in hand paid to the party of the first part by the party of the second part, receipt whereof is hereby acknowledged by the party of the first part, the party of the first part acknowledges the said payment in full settlement and satisfaction of all claims, charges, damages and controversies existing or which may in the future exist or arise out of said bond above set forth and discharges and agrees forever to hold harmless, the said party of the second part from any and all liability, judgment or damages arising or which in the future may arise out of said bond.

In Witness Whereof, the parties hereto have set their hands and seals this 9th day of October 1917.

UNITED STATES OF AMERICA.

By R. R. Wood,
Major, Q. M. Corps, U. S. A.

NATIONAL SURETY COMPANY,

By Fordyce, Holliday & White,
Its Attorneys.

31 War Department
Office of the Depot Quartermaster
St. Louis, Mo.

Dec. 11, 1916.

No. 29638.

From Depot Quartermaster.

To National Surety Co., 115 Broadway, N. Y.

Subject Contract Bald Eagle Mining Co. Inc.

1. Reference above mentioned contract for furnishing and delivering at this depot run of mine bituminous coal, you are advised that the following calls were made upon the above Company for delivery of coal as follows:

Nov. 1st call 23, 40 tons at \$2.00 per ton.....	\$80.00
" " " 24, 20 " " 2.00 " "	40.00
" " " 25, 5 " " 2.00 " "	10.00
" " " 28, 40 " " 2.00 " "	80.00
Total	\$210.00

2. Owing to the failure of the Bald Eagle Mining Company to make deliveries on the above orders this office was compelled to purchase in open market the following:

Nov. 25th; call 30, 4 tons at \$4.00 per ton	\$16.00
" " " 31, 4 " " 4.00 " "	16.00
" 27th, " 34, 11 " " 4.00 " "	44.00
Dec. 2nd. " 36, 15 " " 4.00 " "	60.00
" " " 37, 5 " " 4.00 " "	20.00
" 6th " 39, 10 " " 4.00 " "	40.00

"	9th	40, 27	" "	4.00	" "	108.00
						<hr/>
Total						\$304.00
Total Cont. cost.						152.00
						<hr/>
Excess						152.00

3. Your company having bonded the Bald Eagle Mining Company, in the sum of \$150. it is requested that you forward to this office a check for this amount with a view of avoiding legal procedure.

STANLEY

Lieut. Col. Q. M. Corps,

Recorded J. L. D.

32

(Release and Receipt for \$150.00)

This Release and Receipt, dated this 30th day of December, 1916, by and between Colonel D. S. Stanley, United States Quartermaster of the United States Government, party of the first part, and National Surety Company, of the City of New York, State of New York, party of the second part, Witnesseth:

That whereas, on or about the 7th day of June, 1916, said party of the second part executed in behalf of the Bald Eagle Mining Company, as principal, contractors's bond Number 897872, indemnifying the United States of America Quartermaster's Depot for the faithful performance of said principal, Bald Eagle Mining Company, to deliver and supply coal at the United States Arsenal, for the fiscal year, from July 1st, 1916, to June 30th, 1917, said bond being in the penal amount of One Hundred and Fifty Dollars (\$150.00);

And whereas said Bald Eagle Mining Company has failed to carry out the terms and conditions of said bond and contract with said party of the first part, and said party of the first part was required to fulfill said contract on the open market, and said party of the first part did buy coal on the open market, at the best price obtainable, and the amount due under said bond from the party of the second part to the party of the first part is the sum of One Hundred and Fifty Dollars (\$150.00);

Now Therefore, for and in consideration of the sum of One Hundred and Fifty Dollars (\$150.00), in hand paid to the party of the first part by the party of the second part, receipt whereof is hereby acknowledged by said party of the

first part, the party of the first part acknowledges said payment, in full settlement and satisfaction of all claims, charges, damages, and controversies existing, or which may in the future exist or arise out of said bond above set forth, and discharges and agrees to forever hold harmless the said party of the second part from any and all liability, judgments or damages arising, or which may in the future arise, out of said bond.

In Witness Whereof, the parties hereto have set their hands, this 30th day of December, 1916.

UNITED STATES OF AMERICA,
By D. S. Stanley,
Lieutenant colonel, Q. M. Corps, D. Q. M.
United States Quartermaster.

NATIONAL SURETY COMPANY,
By Fordyce, Holliday, & White,
Its Attorneys.

34 (Petition for review of Order of Referee on Claim of National Surety Company, for \$3000.00).

To Honorable Walter D. Coles, Referee in Bankruptcy:

Your petitioner respectfully shows:

That your petitioner is a creditor of the Bald Eagle Mining Company, the above named bankrupt, and that its claim has been allowed herein and accorded priority under the law of the United States, and particularly under Section 3466 of the Revised Statutes of the United States.

That on the 25th day of March, 1918, an order, a copy of which is hereto annexed, was made and entered herein.

That such order was and is erroneous in that, allowing the prayer of said National Surety Company's petition to amend its Proof of Claim of Three Thousand Dollars (\$3,000) against said Bald Eagle Mining Company, bankrupt, by [a] according to its said claim priority was an attempted novation and was not in legal effect, an order allowing an amendment of said National Surety Company's Proof of Claim, but was, in legal effect, allowing a new and different claim by said National Surety Company against said bankrupt which could not lawfully be allowed in favor of said National Surety Company after the 28th day of November, 1917, said Bald Eagle Mining Company having been adjudicated a bankrupt on the 29th day of November, 1916.

35 That such order was and is erroneous, in that said National Surety Company is not entitled to share in the distribution of said bankrupt's estate pro rata with the United States, as by Section 3466 Revised Statutes of the United States, it is specifically provided that whenever any person indebted to the United States is insolvent, the debts due the United States shall be first satisfied.

Wherefore, your petitioner, feeling aggrieved because of such order, prays that the same may be reviewed, as provided in the bankruptcy law of 1898 and General Order XXVII.

Dated this 2nd day of April, 1918.

UNITED STATES,

By Benj. L. White,
Assistant United States Attorney.
Petitioner.

State of Missouri,
City of Saint Louis—ss.

I, Benjamin L. White, Assistant United States Attorney, within and for the Eastern Judicial District of Missouri, for and on behalf of the United States, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained, are true, according to the best of my knowledge, information and belief.

(Signed) BENJ. L. WHITE.

(Seal)

Assistant United States Attorney.

Subscribed and sworn to before me this 2nd day of April, 1918.

(Signed) W. W. NALL,

Clerk of the United States District Court,
Eastern Division of the Eastern Judicial
District of Missouri.

In re Bald Eagle Mining Company, a corporation, Bankrupt.

Minutes of Orders of Referee of March 25, 1918.

(Motion of National Surety Company for leave to amend its claim for \$3000.00, sustained; and claimant accorded like priority as the United States, etc.)

March 25,

Hearing on motion of National Surety Company for leave to amend its claim for \$3,000.00, heretofore allowed as general claim against the bankrupt; motion of claimant sus-

tained and claimant accorded like priority as the United States; claimants' claim to share in distribution

36 (Motion of National Surety Company for leave to amend its claim for \$150.00, sustained, and claimant accorded like priority as the United States, etc.)

March 25,

of estate pro-rate with the United States.

Hearing on motion of National Surety Company for leave to amend its claim for \$150.00, heretofore allowed as general claim against the bankrupt; motion of claimant sustained and claimant accorded like priority as the United States; claimant's claim to share in distribution of estate pro-rata with the United States.

(Petition for Review of Order of Referee on Claim of National Surety Company, for \$150.00.)

To Honorable Walter D. Coles, Referee in Bankruptcy:

Your petitioner respectfully shows:

That your petitioner is a creditor of said Bald Eagle Mining Company, the above named bankrupt, and that its claim has been allowed herein and accorded priority under the law of the United States, and particularly under Section 3466 of the Revised Statutes of the United States.

That on the 25th day of March, A. D. 1918, an order, a copy of which is hereto annexed, was made and entered herein.

That such order was and is erroneous in that, allowing the prayer of the National Surety Company's petition to amend its Proof of Claim of One Hundred and Fifty Dollars (\$150.00) against said Bald Eagle Company, bankrupt, by according to its said claim priority was an attempted novation and was not in legal effect, an order allowing an amendment of said National Surety Company's Proof of Claim, but was, in legal effect, allowing a new and different claim by said National Surety Company against said bankrupt which could not lawfully be allowed in favor of said National Surety Company after the 28th day of November, 1917, said Bald Eagle Mining Company having been adjudicated a bankrupt

37 on the 29th day of November, 1916.

That such order was and is erroneous, in that said sum of One Hundred and Fifty Dollars (\$150.00) referred to in

the claim of said National Surety Company, has never been paid by said National Surety Company to the United States, and is therefore not eligible to [subrogation] and priority as provided by Section 3468 of the Revised Statutes of the United States.

That said order was and is erroneous in that said National Surety Company is not entitled to share in the distribution of said bankrupt's estate pro rata with the United States, as by Section 3466, Revised Statutes of the United States, it is specifically provided that whenever any person indebted to the United States is insolvent, the debts due the United States shall be first satisfied.

Dated this 2nd day of April, 1918.

UNITED STATES

By Benj. L. White,
Assistant United States Attorney,
Petitioner.

State of Missouri,
City of Saint Louis—ss.

I, Benjamin L. White, Assistant United States Attorney, within and for the Eastern Judicial District of Missouri, for and on behalf of the United States, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained, are true, according to the best of my knowledge, information and belief.

(Signed) BENJ. L. WHITE,
Assistant United States Attorney.

(Seal)

Subscribed and sworn to before me this 2nd day of April, 1918.

(Signed) W. W. NALL,
Clerk of the United States District Court,
Eastern Division of the Eastern Judicial
District of Missouri.

In re Bald Eagle Mining Company, a corporation, Bankrupt.
Minutes of Orders of Referee of March 25, 1918.

(Motion of National Surety Company for leave to amend its claim for \$3000.00, sustained, and claimant accorded like priority as the United States, etc.)

March 25,

38 Hearing on motion of National Surety Company for leave to amend its claim for \$3,000.00, heretofore allowed as general claim against the bankrupt; mo-

tion of claimant sustained and claimant accorded like priority as the United States; claimant's claim to share in distribution of estate pro-rata with the United States.

(Motion of National Surety Company for leave to amend its claim for \$150.00, sustained, and claimant accorded like priority as the United States, etc.)

March 25,

Hearing on motion of National Surety Company for leave to amend its claim for \$150.00, heretofore allowed as general claim against the bankrupt; motion of claimant sustained and claimant accorded like priority as the United States; claimant's claim to share in distribution of estate pro-rata with the United States.

Endorsed: Filed in the District Court on May 1, 1918.

39 (Memorandum Opinion of the District Court.)

Dyer, J.

This matter is before the Court on a certificate of Walter D. Coles, Esq., Referee in Bankruptcy.

The facts in the case are undisputed and are fully set forth in the Referee's report, to which reference is here made.

Briefly the facts are that the Bald Eagle Mining Company (the bankrupt) entered into a contract with the United States Government to furnish to it certain coal at certain prices and within a certain time.

To secure the performance of said contract by the said Bald Eagle Mining Company a bond was given in the penal sum of three thousand dollars, with the National Surety Company as surety. The Mining Company failed to keep its contract and the United States was compelled to go into the open market for the amount of coal covered by the contract. This caused a loss to the United States of something over twelve thousand dollars.

Demand was made upon the Surety Company by the United States for the amount of the bond, to-wit: \$3000.00. This was promptly paid. For this amount so paid the National Surety Company made claim against the estate of the Bald Eagle Mining Company (bankrupt) and the same was allowed by the Referee in Bankruptcy as a preferred claim along with the claim of the United States for more than \$9000.00.

It is to this action of the Referee that the United States objects. Briefs have been filed by the United States Attorney and the Attorneys for the Surety Company.

The United States Attorney relies upon Section 3466 of the Revised [States]. That Section is as follows:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

He then says "No person is entitled to have the payment of his claim prorated with that of the United States.

Section 3468 of the Revised Stats. of the United States is as follows:

"Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator or assigns, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity in his own home, for the recovery of all moneys paid thereon." (2 Fed. Stat. Ann. (2nd. Ed. page 223.)

It is insisted by counsel for the Surety Company that this Section gave full authority to the Referee to make the allowance in favor of the Surety Company. With this contention, of counsel for the Surety Company the Court fully agrees.

The conclusions reached and the orders made by the Referee are approved and in all things confirmed.

Endorsed: Filed in the District Court December 31, 1918.

- 41 (Order of the District Court, affirming Referee's Orders of March 25, 1918.)

In the Matter of Bald Eagle Mining Company, a corporation,
Bankrupt, In Bankruptcy. No. 2879.

The Court having fully considered the question certified by the Referee in Bankruptcy upon the petitions of the United States for review of the orders entered March 25th, 1918 by the Referee allowing the claims of the National Surety Company with the same priority as that accorded to the claim of the United States, doth

Order, Adjudge and Deeree that the said orders of the Referee be in all things approved and confirmed, and the petitions of the United States for review thereof denied and dismissed; to which ruling of the Court the United States excepts.

Memorandum opinion filed.

December 31st 118.

(Signed) DAVID P. DYER,
Judge.

Endorsed: Filed Dec. 31, 118. W. W. Nall, Clerk.

- 42 (Clerk's Certificate to Transcript of Proceedings.)

United States of America,
Eastern Division of the Eastern Judicial
District of Missouri—ss.

I, Walter W. Nall, Clerk of the District Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify the writing hereto annexed to be a true copy of the Certificate of Referee and attached papers, filed May 1, 1918,—Opinion of Court, filed December 31st, 1918,—and Order of Court of date of December 31, 1918,

In Case No. 2879.

In the Matter of Bald Eagle Mining Company, a corporation,
Bankrupt, In Bankruptcy.

as fully as the same remain on file and of record in said matter in my office.

Seal
U. S. Dist. Court
East. Division
East. Judicial Dis.
of Mo.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said Court, at office in the City of St. Louis, in said District, this Tenth day of January in the year of our Lord nineteen hundred nineteen.

W. W. NALL,
Clerk of said Court.
By Otto O. Fickeissen, D. C.

Filed Jan 16 1919 E. E. Koch Clerk.

45 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

Appearance of Counsel for Petitioner.

United States Circuit Court of Appeals, Eighth Circuit.

No. 201, Original.

United States, petitioner, vs. National Surety Company.

The clerk will enter my appearance as counsel for the petitioner.

BENJ. L. WHITE.

(Endorsed) : Filed in U. S. Circuit Court of Appeals Mar. 21, 1919.

Appearance of Counsel for Respondent.

The clerk will enter my appearance as counsel for the respondent.

S. W. FORDYCE, JR.

JOHN H. HOLLIDAY.

THOMAS W. WHITE.

W. H. WOODWARD.

LUCIUS W. ROBB.

(Endorsed) : Filed in U. S. Circuit Court of Appeals Mar. 29, 1919.

6 *Order of submission.*

May Term, 1919, Wednesday, May 28, 1919.

No. 201, Original.

United States, petitioner, vs. National Surety Company, on petition to revise,

and

United States, appellant, vs. National Surety Company.

No. 5362.

Appeal from the District Court of the United States for the Eastern District of Missouri.

These causes, Nos. 201, original, and 5362, having been called for hearing in their regular order, the same were submitted on the brief filed in behalf of the petitioner and appellant and argued by Mr. Frank E. Williams for the respondent and appellee.

Thereupon, these causes were submitted to the court on the printed record, the transcript of record from said District Court and the briefs of counsel filed herein.

Opinion.

United States Circuit Court of Appeals, Eighth Circuit.

No. 201, Original.—December Term, A. D. 1919.

United States, petitioner, vs. National Surety Company, respondent.

Petition to revise order of the District Court of the United States for the Eastern District of Missouri.

Mr. W. L. Hensley, United States Attorney, and Mr. Benjamin L. White, Assistant United States Attorney, submitted brief for petitioner.

Mr. Frank E. Williams (Mr. S. W. Fordyce, jr., Mr. John H. Holliday, Mr. Thomas W. White, and Mr. Lucius W. Robb were with him on the brief), for respondent.

Before Hook and Carland, Circuit Judges, and Youmans, District Judge.

CARLAND, Circuit Judge, delivered the opinion of the court.

The petitioner by this proceeding seeks to have revised in matter of law an order of the District Court made December 31, 1918, confirming certain orders of the referee with reference to the claims of respondent against the estate of the Bald Eagle Mining Co., a bankrupt. The undisputed facts are as follows. On November 3, 1917, the respondent filed two claims against the estate of the bankrupt for \$3,000 and \$150, respectively, which were allowed on the same day. On the 12th day of December, 1917, the United States filed a claim against the estate of the bankrupt for \$9,912.84, which was allowed on the same day, and it was further ordered and directed that said claim be accorded priority over all other claims except those for wages and taxes. On March 12, 1918, the respondent filed a motion with the referee for leave to amend its two claims above mentioned by claiming priority for the same equal to that of the United States. The motion was granted on March 25, 1918. The United States filed a petition for review. The proceedings were duly certified, and after a hearing the District Court affirmed the order of the referee. It is this last named order which the United States seeks to have revised. The claim of the United States against the bankrupt was for damages suffered by them by reason of the failure of the bankrupt to perform its contract with the Government for supplying coal at Jefferson Barracks, Missouri, after deducting from said damages payments made by the respondent. The claim of the respondent for \$3,000 was for money paid the United States by reason of its being surety on the bond of the bankrupt given to

secure the faithful performance of the coal contract above mentioned. The claim of respondent for \$150 was for money paid the United States by respondent by reason of its being surety upon the bond of the bankrupt to secure the faithful performance of a contract to furnish bituminous lump coal to the United States Arsenal at St. Louis, Missouri. In each instance the amount paid was the full amount of the bond. The question for decision is as follows: Has the United States and the respondent an equal priority to the extent of the amount of their respective claims or has the United States exclusive priority as against all other claims until the full amount of its claim is paid? The applicable statutes are as follows:

Section 3466, R. S. "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

Section 3468 R. S. "Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon."

There is no question as to the meaning of sec. 3466. In the cases specified in said section, the United States has beyond question undoubted priority. When we come to section 3468, it is claimed by counsel for the United States that it must be so construed as to be of no force or effect except in cases where the United States has no claim whatever to be satisfied, and it appearing in the present case that the United States has a claim against the estate of the bankrupt, said section is inoperative. The ground of this contention is that the priority granted by section 3466, still attaches to the claim of the United States even as against the claims of respondent and that no priority exists in favor of respondent until the claim of the United States is fully paid. If this contention is sound we must read into section 3468, a proviso at the end of the last clause but one of the section, reading as follows, "provided that said United States has no claim against the insolvent estate."

We do not think we have any authority to interpolate such a proviso. We are of the opinion that while the general priority of the United States is undoubted, it is within the power of Congress to qualify or limit this priority, and that by the enactment of section 3468, it has been provided that in the cases mentioned in said section, the priority of the United States has been transferred to a surety who has paid the penalty of a bond in full, notwithstanding the latter still has a claim against the insolvent. It is claimed
50 by counsel for the United States that the surety in a case like the one at bar has no priority unless he pays all of the debt or debts due from the bankrupt to the United States. The section which we are endeavoring to construe does not provide that the surety shall pay all the debt or debts due from the bankrupt estate to the United States but only the money due upon such bond and it is conceded that the respondent did this. If it paid all the debt for which it was obligated as surety. If it should pay any more it would be a mere volunteer and not entitled to the right of subrogation as to the excess. It is not material if the contention of counsel for the United States is right whether the claim of the United States arises out of the same transaction as that of respondent or not. It is contended and it is no doubt the law that the priority of the sovereign exists in full force and vigor unless qualified by express words. But we have express words in section 3468. We think that section 3466 and 3468 should be construed together so as to give both force and effect, the United States retaining its priority as to the balance of its claims against the bankrupt estate and the respondent standing on a level with them as to its claim. No case has been cited nor have we found one deciding the question involved. The cases cited simply establish the proposition that where the title of the United States and the citizen concur, the title of the United States except so far as the legislature has thought fit to interfere shall be preferred, and that where the principal in any bond given to the United States is insolvent and any surety on the bond pays to the United States the money due upon such bond, such surety shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent as is secured to the United States. These rights are all given by the sections quoted and citation of other authority is unnecessary. Respondent's rights must be determined by section 3468. What its rights would be under the equitable doctrine of subrogation is not involved. The unreasonableness of the contention of counsel of the United States is made to appear when we consider a case where different bonds have been given by an insolvent to the United States with different sureties. One surety pays the full penalty of the bond on which he is liable but he can have no priority until he has paid all the other bonds on which he is not liable.

51 We do not think the application to amend the claims of respondent by claiming priority constituted the filing of new claims after the year allowed by law. Appeal No. 5362 is dismissed

Judgment

Affirmed.

Filed December 10, 1919.

Hook, Circuit Judge, dissenting.

Sec. 3466 of the Revised Statutes, which provides that "when-
ever any person indebted to the United States is insolvent * * *
the debts due to the United States shall be first satisfied," is a statu-
tory adoption for this country of a public policy which has pre-
vailed in England from a very early day. The right is one of pre-
ference in the sovereign to the claims of all private persons, and is
of universal application. No other statute should be construed to
impair or lessen it unless the intention to do so is clearly manifested.

With the above in mind let us look at sec. 3468, R. S., which pro-
vides that "whenever the principal in any bond given to the United
States is insolvent * * * and * * * any surety on the bond
* * * pays to the United States the money due upon such bond,
such surety * * * shall have the like priority * * *." This is
no more than a statutory declaration of the equitable doctrine of sub-
rogation in favor of sureties. See *United States v. Ryder*, 110 U. S.
729. There is nothing in the language employed or in the decisions
of the courts applying it to indicate that it should be given a more
enlarged construction. In the case of private rights subrogation is
not allowed to work loss or injury to a lien or preferred creditor
whose claim has not been wholly discharged, although the surety
may have paid in full his obligation for part of it. See *National
Bank of Commerce v. Rockefeller*, 98 C. C. A. 8, 174 Fed. 22, by this
court. Much less should it be allowed to impair or lessen the sover-
eign preferential right of the Government. In *Reg. v. O'Callaghan*,
1 Ir. Eq. 439, it was held that the surety of a person indebted to
the Government who pays the indebtedness does not succeed to the
Government's right of priority if there be a further amount owing
it, though on a different account. My brothers say that such

52 a construction of sec. 3468 is contrary to its express language
and would deprive it of efficacy. It might be said that a
contrary construction lessens materially the unqualified language of
sec. 3466. I think, however, both sections may be construed to give
each full effect according to its terms. That should always be done
if possible. The Government's priority by sec. 3466 is over all private
claims. The right given by sec. 3468 to the surety who pays his obli-
gation in full is a "like priority," that is to say, a priority over all
private claims. But there is nothing in this to imply, and it does not
follow, that the surety is thereby raised to an equal or pro rata status
with the Government as regards an unpaid demand it holds against
the common debtor or his estate whether on the same or another

account. Statutes declaratory of old principles of public policy or of the common law should receive the old constructions, and in that way apparent inconsistencies may be avoided. I think the order of the trial court should be reversed.

Filed December 10, 1919.

Decree.

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1919, Wednesday, December 10, 1919.

No. 201, Original.

United States, petitioner, vs. National Surety Company, on petition to revise.

This matter came on to be heard on the petition to revise and exhibits thereto, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that said petition to revise be, and the same is hereby, denied, and that the order and decree of the District Court of the United States for the Eastern District of Missouri, entered on the 31st day of December, A. D. 1918, in the matter of Bald Eagle Mining Company, a corporation, bankrupt, in bankruptcy, No. 2879, which said order and decree approved and confirmed the orders of the referee allowing the claims of the National Surety Company with the same priority as that accorded to the claim of the United States, be, and the same is hereby, in all respects approved and confirmed, and that a certified copy of this decree be transmitted to the said District Court, as provided by the rules of this court.

It is further ordered, adjudged, and decreed by this court, that the petition to revise be, and the same is hereby, dismissed without costs to either party in this court.

December 10, 1919.

Clerk's certificate.

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the petition to revise with transcript of certain proceedings in the District Court of the United States for the Eastern District of Missouri, in the matter of Bald Eagle Mining Company, a corporation, bankrupt, in bankruptcy, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries and proceedings, in-

cluding the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States. in a certain cause in said Circuit Court of Appeals wherein United States was petitioner, and National Surety Company was respondent, No. 201, Original, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the tenth day of February, A. D. 1920, a certified copy of the decree of this court was sent to the clerk of the said District Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this eighteenth day of February, A. D. 1920.

[SEAL.]

E. E. KOCH,

*Clerk of the United States Circuit Court of Appeals
For the Eighth Circuit.*

55

In the Supreme Court of the United States.

October Term, 1919.

United States, petitioner, vs. National Surety Company.
Nos. 779 and 780.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, to the writs of certiorari granted therein.

ALEX. C. KING,

Solicitor General.

S. W. FORDYCE, JOHN H. HOLLIDAY & THOS. W. WHITE,

Counsel for Respondent.

(Endorsed :) No. 201, Original. United States, petitioner, vs. National Surety Company. No. 5362. United States, appellant, vs. National Surety Company. Stipulation as to return to writs of certiorari. Filed May 12, 1920. E. E. Koch, clerk.

56 UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which The United States is petitioner, and National Surety Com-

any is respondent, No. 201, Original, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to revise the order of the District Court of the United States for the Eastern District of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certi-

57 fied by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.]

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

58

Return to writ.

UNITED STATES OF AMERICA,

Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of United States, petitioner, vs. National Surety Company, No. 201, Original, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals, at office in the city of St. Paul, Minnesota, in the Eighth Circuit, this eighteenth day of May, A. D. 1920.

[SEAL.]

E. E. KOCH,

Clerk of the United States Circuit

Court of Appeals, Eighth Circuit.

(Endorsed:) File No. 27534. Supreme Court of the United States, No. 779, October Term, 1919. The United States vs. National Surety Company. Writ of certiorari.

(Stamped:) Office of the clerk Supreme Court U. S. Received May 21, 1920.

(Stamped:) Filed May 12, 1920. E. E. Koch, clerk.

59 (Endorsed:) File No. 27534. Supreme Court U. S. October Term, 1920. Term No. 271. The United States, Petitioner, vs. National Surety Co. Writ of certiorari and return. Filed May 21, 1920.

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